

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1529 of 1984****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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KUNJVIHARI P TRIVEDI - Appellant(s)
Versus
UNION OF INDIA - Defendant(s)

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Appearance :

MR PM RAVAL for Appellant(s) : 1,
 MR KM PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 08/08/2006****ORAL JUDGMENT**

Present appeal has been filed by the appellant original plaintiff (hereinafter referred to as "the plaintiff") challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 27-7-1983

passed in Civil Suit No.1145 of 1982 in dismissing the said suit.

2. The plaintiff who was serving with the defendant Union Bank of India was charge sheeted and departmental inquiry was initiated against him and he was punished by order dated 1-3-1976. It appears that against the order of punishment imposed by the Inquiry Officer, he preferred appeal before the Appellate Officer and by order dated 10th September 1977, the appeal came to be dismissed. It also appears from the record that during the inquiry, he was under suspension and therefore, he prayed for the salary for the intervening period i.e. for the period under which he was under suspension and that application came to be decided by the Superintendent, Department of Personnel by order dated 8-5-1979. The plaintiff challenged the order passed by the Appellate Officer dated 10th September, 1977 as well as the order of punishment and also challenged the order dated 8-5-1979 of the Superintendent, Department of Personnel by which the application submitted by the plaintiff to pay the difference in salary during the period he was under suspension, by way of the aforesaid suit before the learned City Civil Court at Ahmedabad. The suit was

resisted by the defendant and it was submitted that the suit is barred by limitation as so far as challenging the order dated 10th September, 1977 is concerned, it is clearly time barred and it has nothing to do with the claim of the plaintiff with regard to salary for the period he was under suspension and so far as the challenge to the order dated 8-5-1979 is concerned, it was submitted that it is not by way of penalty and it is the discretion of the management to pay the salary during the suspension period. The learned trial Court accepted the contention on behalf of the defendant and held that so far as the challenge to the order dated 10th September, 1977 is concerned, it is time barred and it is barred by limitation and so far as challenge to the order dated 8-5-1979 is concerned, the learned trial Court decided the same on merits and dismissed the suit. Being aggrieved and dissatisfied with the judgment and decree passed by the learned City Civil Court at Ahmedabad in dismissing the aforesaid Civil Suit No.1145 of 1982, the appellant original plaintiff has preferred the present first appeal.

3. Though, this matter was called out thrice today, the learned advocate appearing on behalf of the appellant is

absent and this being a appeal of 1984, this Court has decided the present appeal on merits ex parte. It appears from the record that in the appeal memo, it is contention on behalf of the appellant that the learned trial Court has materially erred in holding that the suit is barred by limitation so far as the challenge to the order dated 10th September, 1977 is concerned, as according to the plaintiff, the limitation should be considered from 8th May, 1979. It also appears from the appeal memo that the plaintiff has relied upon Clause 19.12(b) of the Memorandum of Bipartite settlement so far as his claim with regard to salary for the period under which he was under suspension and it is submitted that the said clause is misinterpreted by the learned trial Court.

4. So far as the finding of the learned trial Court to the effect that the suit is barred by limitation so far as the challenge to the appellant dated 10th September 1977 is concerned, it is required to be noted that, first of all it has nothing to do with the order dated 8-5-1979 whereby Superintendent of Department of Personnel declared that whatever the amount of remuneration for the suspension period as ordered, is correct. The plaintiff filed the suit on 18th March, 1982 and considering Article

58, the plaintiff was required to file the suit challenging the order dated 10th September, 1977 on or before 10th September, 1980 and therefore, the learned trial Court has rightly dismissed the suit as barred by limitation so far as the challenge to the order dated 10th September 1977 is concerned. The contention on behalf of the plaintiff that the learned trial Court ought to have considered the starting point of limitation from 8-5-1979, cannot be accepted for the simple reason that, appeal against the order of punishment received by the plaintiff on 10th September 1977, has nothing to do with the order pertaining to the salary of the suspension period dated 8-5-1979. Under the circumstances, the learned trial Court has rightly dismissed the suit as barred by limitation so far as the challenge to the order dated 10th September 1977 is concerned.

5. So far as the challenge to the order dated 8th May, 1979 i.e. the claim of the plaintiff with regard to the full salary during the suspension period is concerned, it is required to be noted that in fact after conclusion of the inquiry, order of punishment was passed by the disciplinary authority and the punishment was imposed by the authority. Now considering the relevant provisions

i.e. Clause 19.12(b) of the Memorandum of Bipartite settlement, if some punishment other than dismissal is inflicted, the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc. Therefore, it is the discretion of the management and the plaintiff cannot as a matter of right claim full salary during the period of suspension. Under the circumstances, the learned trial Court has rightly rejected the same even on the ground of laches also. On going through the entire record and proceedings, it appears that the learned trial Court has rightly dismissed the suit. This Court is in complete agreement with the reasonings and findings given by the learned trial Court while dismissing the suits.

6. For the reasons as stated above, the appeal fails and the same is dismissed. No costs. Ad interim relief if any granted earlier stands vacated forthwith.

(M.R.SHAH,J.)

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